THE CONTINENTAL LEGAL HISTORY SERIES. Edited by a Committee of the Association of American Law Schools.

II. GREAT JURISTS OF THE WORLD, FROM GAIUS TO VON JHERING. By various authors. Edited by Sir John MacDowell, Fellow of the British Academy, and Edward Manson, Secretary of the Society of Comparative Legislation. With an introduction by Van Vechten Veeder, Judge of the United States District Court, New York. With portraits. Boston: Little, Brown, and Company, 1914. pp. xxxii 607.

The general features of this series have been noted in reviews of Volume I and Volume III (Cf. 11 MICH. L. REV. 342). This volume is an excellent supplement to its immediate predecessor, "A General Survey of Events, Sources, Etc." and it has the human interest that belongs to biography. As the product of various authors it is naturally somewhat uneven in the style and execution of the several lives. With some of the writers the desire to present the salient features of the lives in full detail has been yielded to with the result of a decrease of interest in the story of the human achievement. Among the most interesting of the essays are those on Grotius, Montesquieu, Bentham and Savigny partially due, to be sure, to the intrinsic interest of the subjects but also in part to the skill in presentation.

J. H. D.

THE MODERN LEGAL PHILOSOPHY SERIES. Edited by a Committee of the Association of American Law Schools.

V. LAW AS A MEANS TO AN END. By Rudolf von Jhering, Late Professor of Law in the University of Göttingen. Translated from the German by Isaac Husik, Lecturer on Philosophy in the University of Pennsylvania. With an Editorial Preface by Joseph H. Drake, Professor of Law in the University of Michigan. With Introduction by Henry Lamm, Justice of the Supreme Court of Missouri and W. M. Geldart, Vinerian Professor of English Law in the University of Oxford. Boston: The Boston Book Co. 1913. pp. lix, 483.

XII. PHILOSOPHY OF LAW. By Joseph Kohler, Professor of Law in the University of Berlin. Translated from the German by Adalbert Albrecht, Associate Editor of the Journal of Criminal Law and Criminology. With an Editorial Preface by Albert Kocourek, Lecturer on Juriprudence in Northwestern University. With Introductions by Orrin N. Carter, Justice of the Supreme Court of Illinois, and William Caldwell, Professor of Logic and Moral Philosophy in McGill University, Montreal. Boston: The Boston Book Co. 1914. pp. xliv, 390.

The earlier volumes of this series have been discussed in previous issues of this Review. (Cf. 8 MICH. L. REV. 351; 10 MICH. L. REV. 663 and 11 MICH. L. REV. 174.) In addition to the editorial contributions mentioned on the title pages, each of the volumes contain valuable appendices. Appendix I, of Volume V, gives an appreciative account of Jhering, the man and his works,

by Adolph Merkel, Late Professor of Law at the University of Strassburg. Appendix II has an enlightening discussion of "Finality in Law" by L. Tanon, President of the Court of Cassation of France. Volume XII has in one appendix a review of "Kohler's Philosophy of Law," by Adolf Lasson, Professor at the University of Berlin, and, in another appendix, J. Castillejo y Duarte, Professor at the University of Valladolid, discusses "Kohler's Philosophical Position."

With the publication of each successive volume of the "Legal Philosophy Series" the value of the underlying purpose of the series is made more evident. Gareis's "Juristic Survey" will be an invaluable model for the author of the treatise on Elementary English Law when some English or American legalist has learned enough about the history and philosophy of our own law to be able to present its fundamental principles in a form suitable for the beginner in the subject. Berolzheimer's "World's Legal Philosophies" and Miraglia's "Comparative Legal Philosophy" will give to such a scholar a fitting introduction to the history of the legal philosophies of Continental Europe and the later volumes of the series make accessible the best work of the greatest philosophic jurists of modern Europe. The most insistent demand made upon legal thinkers of our country at the present time, is for some amelioration of our complicated—one may even say chaotic—system of law. But most thoughtful men now recognize that the way to betterment is not by any rough and ready scheme of codification. We are not nearly so ready for a code as Europe was at the beginning of the last century and, if we may judge by the experience of Germany, we may be well into another century before the necessary preliminary work is done. We must know much more of the history of our system; we must know something of comparative law, at least of the Roman law, twin sister of our own system; and above all, before we can hope for unification, we must learn something of the philosophy of law, which is a history of the struggle for an intellectual and all-embracing unity. The "Legal Philosophy Series" and the "Continental Legal History Series" have been planned to give to American lawyers and judges the necessary grounding in history of law, comparative law and juristic philosophy, and although the editor in chief of the series modestly claims only the function of interpreter of the legal knowledge of the Continent, the conception of such a plan and the successful execution of it arises to the dignity of a great original contribution to the solution of our legal problems.

A warning should be given at this point that the way to get a proper conception of the worth of the volumes mentioned above is not to continue the reading of this review but to get the volumes themselves and read the several appendices, all written by critics who are acknowledged masters of the subject. But some observations may not be out of place on a question that occupied most of the attention of the notable gathering of practical jurists and legal philosophers which met at Chicago recently in the "Conference on Legal and Social Philosophy." The question is, how can philosophy be of practical use to the distracted lawyer and puzzled judge who is looking for some unifying principle to help in the solution of practical difficulties?

The struggle for a better definition of law has resulted in a progressive widening of the application of law. To one who will read carefully the several volumes of the "Legal Philosophy Series" it will be perfectly evident that the struggle for a wider and deeper philosophic conception of the bases of law has had a like result. The practical bearings of Aristotle's fundamental postulate of justice that "equality is equity" was recognized but dimly in his own time, but throughout all subsequent time it has been used as a working formula in state-building and law-making and is now universally accepted as the guiding principle of modern democracy. The theory of natural law first definitely formulated by Aristotle was adopted as a unifying principle by the practical Roman. Throughout the Middle Ages it served as a bulwark for the protection of the people against the encroachments of Emperor and Pope. In the hands of Grotius it was made the basis of the law of nations. In its modern garb of the law of reason it has been said to be "the life of the modern Common Law." The pseudo-philosophical theory of utility as elaborated by Bentham and his followers became the practical basis of law reform by which large portions of the English system were completely reconstructed. The social utilitarian theories of Jhering and his insistence upon the idea that law is not simply a growth, the various stages of which are to be observed and registered, but that law is the result of a striving with a purpose toward a previously determined goal, has borne abundant fruit in Germany and can be made of great practical use in our own system of law where our growing social needs demand an expansion of our historical common law. As we take the long look back over the history of juristic philosophy we must acknowledge that metaphysical lucubration has been an efficient handmaid of practical progress. The philosophic as well as the practical advance has been at times discouragingly slow and we frequently have our patience tried by the logomachy of the theorists which so frequently only destroys what has gone before and takes no step forward. But a careful reading of master works of the really great juristic philosophers shows that each does make some slight advance upon the work of his predecessor and each brings some aid to the solution of the practical problems of being and doing.

The last published volume, Kohler's "Philosophy of Law," is in many respects the most inspiring and helpful of the series. The phenomenal genius of the man shows in this volume as in all his work, and his life work is such as to make a non-Teutonic professor gasp with astonishment. In 1903, when the last census of him was taken, his published works included 526 separate titles, many of them large books, covering topics in general jurisprudence, civil law, criminal law, four good-sized volumes on aesthetics and five in poetry. He is classed as a Neo-Hegelian and is acknowledged to be the leader of this school. He accepts Hegel's "philosophy of identity and doctrine of evolution but rejects his dialectics, (that is the theory of a thoroughly logical, rhythmical growth)" (See page 22). His philosophy of law starts with the "reconstruction of Hegel's doctrine and interprets his doctrine of evolution to mean that mankind constantly progresses in culture." (Cf. p. 26). This "culture" is, of course, the German "Kultur" so much dwelt upon by the other

Neo-Hegelian of this series, Berolzheimer. It is the social force that controls nature through science and art. Law is one of the phenomena of this culture and there must be a conscious effort to adjust the culture of the present to that of the past. The law "must adapt itself to a constantly advancing culture and be so fashioned that conformably to changing cultural demands it promotes rather than hampers and oppresses it." (Cf. p. 4). The general part on the philosophy of law as a phenomenon of culture is followed by a special part on the law of individual persons and the law of the body politic. One might wish that the author were not quite so belligerent in his criticism of opposing schools. From one in his position of acknowledged pre-eminence there might well be expected some mercy toward his more lowly opponents, but such is not the Teutonic professor who knows only the mailed fist as an instrument for combatting error. But it certainly is interesting reading and the volume is a worthy companion of its predecessors in the series. J. H. D.

JUSTICE AND THE MODERN LAW. By Everett V. Abbott of the Bar of the City of New York. Boston and New York: Houghton, Mifflin Company. The Riverside Press, Cambridge, 1913. pp. xiv, 299.

The author of this little book proposes "to exhibit the ultimate principles of justice as actually existent in the law." He rejects the Austinian theory of law because of its fundamental error of a sharp separation of law and ethics. He thinks that the sociological theory of jurisprudence is also faulty in that it merely substitutes the indefinite command of the community as a whole for the definite command of the sovereign. He says that "the law is only the promulgation of ethical principles as they are understood and applied by the community" but declines to discuss philosophy and rests on the "universal human perception that moral obligation does exist." This would not seem to carry us much further into the heart of the matter than does Carlyle's "sense of the oughtness" as the basis of justice, if it were not that he immediately announces three principles: "the egoistic right of freedom, the altruistic duty to help, and the voluntary reciprocating rights and duties of contract," as the basis of all human jurisprudence. The first chapter is devoted to the relation and interplay of these three principles. The next two chapters on the law as it is practiced and the law as it is administered are devoted to an acute and interesting discussion of the obstacles set up by courts and legislature, through which the progress of justice is impeded. These chapters, with their keen analysis and trenchant criticism of decisions of the courts are the best parts of the book. He shows that the lawyer of the common law with all his prejudice against generalizations is nevertheless much given to theorizing. 'Instead of boldly and frankly generalizing he thinks and argues in maxims, proverbs and scraps of gnomic wisdom which are only generalized statements of hasty views and are not the product of scholarly and scientific investigations." And he is only saved from the disasters consequent on his false reasoning by his practical skill in meeting facts.